



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0094]

RIN 1625-AA00

### Safety Zone; Atlantic Ocean, Cape Lookout, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Ocean near Cape Lookout, North Carolina. This temporary safety zone restricts vessel traffic in a portion of the Atlantic Ocean while crews continue to search a plane crash area. This action restricts vessel traffic to protect mariners, vessels, and dive crews from the hazards associated with the work or surveying a plane crash site. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT EFFECTIVE DATE OF PUBLICATION IN THE FEDERAL REGISTER], until March 1, 2022. For the purposes of enforcement, actual notice will be used from February 15, 2022, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0094 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910-772-2221, email [ncmarineevents@uscg.mil](mailto:ncmarineevents@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the recovery operations and required publication of this rule. Immediate action is needed to protect persons and vessels from the hazards associated with carrying out operations to recover the downed aircraft and survey the area for debris. It is impracticable and contrary to the public interest to publish an NPRM because a final rule needs to be in place by February 15, 2022.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal

Register. Delaying the effective date of this rule would be impracticable and contrary to the public interest for the reasons discussed above, immediate action is needed to protect persons, property, vessels, and the marine environment on the navigable waters of the Atlantic Ocean near Cape Lookout in North Carolina.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port North Carolina (COTP) has determined potential hazards associated with operations during recovery work on the site of a plane crash. Work on this site is starting February 15, 2022, and ongoing. This work is a safety concern for anyone transiting the designated recovery area of the Atlantic Ocean and Cape Lookout, NC, because the site work will involve persons in the water. This rule is necessary to protect persons, vessels, and participants from the hazards associated with the recovery efforts.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from on February 15, 2022, through March 1, 2022. The safety zone will be enforced from 7 a.m. through 7 p.m. each day the rule is in effect. The safety zone will include all navigable waters of the Atlantic Ocean within a 1000 yard radius of position 34-48.81N by 076-17.23W. The duration of this zone is intended to protect persons, property, vessels, and the marine environment on the navigable waters of the Atlantic Ocean during the recovery efforts of at downed aircraft. No vessel or person will be permitted to enter the safety zone unless specifically authorized by the Captain of the Port North Carolina or a designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the emergent nature of this event and limited impact to the public. The safety zone is in an area where there is ample space to pass around this area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to pass through the zone if necessary.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 1000 yards of vessels and machinery being used by personnel to survey and recover an aircraft crash site at position 34-48.81N by 076-17.23W. It is categorically excluded from further review under paragraph L[60d] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

165 as follows:

**PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0094

**§ 165.T05-0094 Safety Zone; Atlantic Ocean, Cape Lookout, NC.**

(a) *Location.* The following area is a safety zone on all navigable waters within a 1000 yard radius of position 34-48.81N by 076-17.23W on the Atlantic Ocean near Cape Lookout, North Carolina.

(b) *Definitions.* As used in this section—

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative. Unless permission to remain in the zone has been granted by the COTP or the COTP's designated representative, a vessel within this safety zone must immediately depart the zone when this section becomes effective.

(3) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910-343-3882.

(4) The Coast Guard and designated security vessels enforcing the safety zone can

be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7 a.m. through 7 p.m. each day from February 15, 2022, through March 1, 2022.

Dated: February 15, 2022.

Matthew J. Baer,  
Captain, U. S. Coast Guard,  
Captain of the Port North Carolina.

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